

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. LEMON and DEPARTMENT OF THE ARMY,
COSCOM MEDICAL CLINIC, Fort Bragg, N.C.

*Docket No. 96-947; Submitted on the Record;
Issued March 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that she sustained a fracture of the fifth metatarsal of her left foot and a back spasm on April 28, 1995 in the performance of duty causally related to factors of her federal employment.

On June 15, 1995 appellant, then a 46-year-old medical clerk, filed a claim alleging that on April 28, 1995 she fractured the fifth metatarsal of her left foot and suffered a back spasm when she stepped in a small hole with her right foot and, consequently, fell on her left side. Appellant stopped working on May 31, 1995. On the reverse of the claim form, appellant's supervisor indicated, without explanation, that appellant was not injured in the performance of duty.

On June 9, 1995 Dr. Kent A. Van Belois, a podiatrist and appellant's treating physician, indicated that he first examined appellant on June 1, 1995. He diagnosed a bone fracture of the fifth metatarsal of the left foot, but checked "no" to indicate that he did not believe the condition was caused or aggravated by the employment activity described. Dr. Van Belois, however, did not record a history given by appellant.

On June 19, 1995 appellant's supervisor indicated that appellant fell in her office on April 28, 1995 and told her that she may have caught her heel on a chip in the tile floor. Appellant's supervisor stated that she was present in the room with her back turned. The supervisor further indicated that she attended an examination with appellant and that appellant said nothing regarding her left foot despite repeated questions from the physician. The supervisor stated that when the physician left, appellant complained that her right foot was sore. The supervisor indicated that appellant reported to her that her left foot was broken on June 1, 1995.

On July 13, 1995 Dr. Van Belois recorded that appellant told him that she fell at work and fractured the fifth metatarsal of the left foot. He diagnosed a transverse fracture, fifth

metatarsal left foot, but checked “no” to indicate that he did not believe the condition found was caused or aggravated by an employment activity.

On September 14, 1995 Dr. Van Belois indicated that the fifth metatarsal of the left foot had yet to heal.

In a September 17, 1995 statement, appellant stated that her supervisor was present when the injury occurred. She stated that while walking across a room she placed her right foot in a small hole and fell onto her left side. Appellant stated that her right foot and ankle hurt along with her neck on the left side going down to her left shoulder. She indicated that Dr. Paul Chang examined her at that time and told her she probably had a bruised ankle and neck sprain. Appellant stated that she did not seek immediate attention on the advice of Dr. Chang. She indicated that her left foot began to hurt when weight was put on it and that she began to have back spasms. Appellant indicated that she did not file her claim sooner due to the run around she received from the system.

In a report dated September 28, 1995, Dr. Van Belois stated that since October 1994 he had regularly treated appellant for a right foot injury. He indicated that on June 1, 1995 appellant informed him that “she had fallen a few days previously and ever since her left foot was swollen and sore.” Dr. Van Belois stated that he diagnosed a transverse fracture of the fifth metatarsal base. Dr. Van Belois stated that the prognosis was not good because appellant had a history of foot fractures.

In a decision dated December 18, 1995, the Office denied appellant’s claim because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability. In an accompanying memorandum, the Office noted that appellant submitted no medical evidence concerning back pain. The Office further found that there were discrepancies in the record because appellant did not report a left foot injury until six weeks after its alleged occurrence, she delayed seeking medical treatment, and because Dr. Van Belois saw appellant some four weeks after the fall and she did not mention the incident or complain of left foot pain until June 1, 1995. The Office also noted that Dr. Van Belois stated that appellant had fallen “a few days previously” to his June 1, 1995 examination, but that appellant alleged that she actually fell six weeks prior to June 1, 1995 and that there was no explanation why appellant did not mention the fall when she saw Dr. Van Belois prior to the June 1, 1995 examination. The Office, therefore, denied the claimed back and left foot conditions as not being causally related to employment.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential element of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.²

In the instant case, there is no dispute that appellant was an “employee” within the meaning of the Act, nor that appellant timely filed her claim for compensation. Moreover, appellant’s supervisor corroborated her allegation that she fell at work on April 28, 1995 when she placed her right foot in a hole. It is, therefore, established that the work incident occurred as alleged.

Appellant, however, failed to present any medical evidence addressing her alleged back injury. In addition, the only medical opinion submitted by appellant addressing whether a specific employment factor caused or aggravated her left foot injury was provided by Dr. Van Belois, her treating physician and podiatrist. In his July 13, 1995 report, Dr. Van Belois checked “no” to indicate that he did not believe the condition found was caused or aggravated by an employment activity. Appellant, therefore, failed to meet her burden of establishing that the employment incident caused a personal injury.

The decision of the Office of Workers’ Compensation Programs dated December 18, 1995 is affirmed.

Dated, Washington, D.C.
March 3, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Id.*

Bradley T. Knott
Alternate Member